

PCLL CONVERSION EXAMINATION JANUARY 2018

Title of Paper: Hong Kong Constitutional Law
Date: 4 January 2018
Time: 2:30 p.m. – 2:45 p.m. (Reading Time)
2:45 p.m. – 4:15 p.m.

Instructions

1. Write your **candidate number** on the cover of each answer book. Do **NOT** write your name in the answer book.
2. Start each answer on a separate page of the answer book.
3. Write your answers only in the answer books provided.
4. This is a one and a half-hours examination.
5. This is an open book examination.
6. Reading time for this paper is 15 minutes. Do **NOT** begin writing in your answer books during this period until you are instructed to do so.
7. This paper consists of four pages, including three questions. Candidates are only required to answer **TWO** questions of three. A total of 100 marks may be awarded.
8. Each question is worth 50 marks.
9. The passing mark for this paper is 50 marks.

**DO NOT OPEN THIS QUESTION BOOK
UNTIL YOU ARE TOLD TO DO SO**

PCLL Conversion Examination January 2018

Hong Kong Constitutional Law

Question 1 (50 marks)

The speech of Zhang Xiaoming, former Director of the Liaison Office of the Central People's Government in the HKSAR and the top representative of the central authorities in Hong Kong, sparked off a constitutional debate directly on the powers between the executive and legislature, and has fueled the already heated debate over the structure of the HKSAR government. In his speech commemorating the 25th anniversary of the promulgation of the Basic Law of the HKSAR dated 12 September 2015, Zhang made the following full statement on the political structure of the Hong Kong:

The political structure of the HKSAR is an executive-led government which is directly under the Central Government and takes the Chief Executive for the core of power, under which the executive and the legislative power check on each other and collaborate mutually, and the judiciary is independent.

Hong Kong does not practise the separation of powers system, it was not the case before the hand-over nor is it the case after.

Original Text: 香港特別行政區的政治體制是在中央政府直轄之下、實行以行政長官為核心的行政主導、行政與立法既相互制衡又互相配合、司法獨立的政治體制。

香港不實行三權分立的政治體制，回歸前不是，回歸後也不是。

(Zhang Xiaoming, "Correctly understanding the salient features of the political structure of the HKSAR", an Address delivered at the Symposium on Commemorating the 25th Anniversary of the Promulgation of the Basic Law of the HKSAR on 12 Sept 2015, Hong Kong.)

- 1. Generally and critically comment on the above statement of Zhang Xiaoming, with reference to the Basic Law, and formulate your own opinion with support from authorities. (20 marks)**
- 2. Describe the relationship between the executive, legislative and judiciary branches based on the provisions of the Basic Law. (30 marks)**

Question 2 (50 marks)

In The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region, a White Paper issued by the State Council of the PRC, on 10 June 2014, it is stated that:

As a unitary state, China's central government has comprehensive jurisdiction (“全面管治权”) over all local administrative regions, including the HKSAR. The high degree of autonomy (“高度自治权”) of the HKSAR is not an inherent power, but one that comes solely from the authorization by the central leadership. The high degree of autonomy of the HKSAR is not full autonomy, nor a decentralized power. It is the power to run local affairs as authorized by the central leadership. The high degree of autonomy of HKSAR is subject to the level of the central leadership's authorization. There is no such thing called "residual power."

Since the publication of the White Paper, comprehensive jurisdiction has dominated the official discourse. Henry, a local scholar, criticised that there is no such thing as comprehensive jurisdiction, nor is there a legal basis from the Basic Law.

- 1. Define the meaning of the concept of comprehensive jurisdiction; (10 marks)**
- 2. Analyse the relationship and the possible tension between the comprehensive jurisdiction and the high degree of autonomy. Answer if the comprehensive jurisdiction would jeopardise the high degree of autonomy, and if the answer is the affirmative, then in what way, and if the answer is negative, why. (20 marks)**
- 3. Do you agree with Henry? Support your answer with the theory of "One Country, Two Systems", the provisions of the Basic Law and authorities. (20 marks)**

Question 3 (50 marks)

Article 158 of the Basic Law states that:

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the

courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

In *Democratic Republic of the Congo and Others v. FG Hemisphere Associates LLC*, [2011] 4 HKC 151 ("the Congo Case"), the Court of Final Appeal ("CFA") referred to the test of "Two Conditions" ("the classification condition", and "the necessity condition") developed by the CFA in *Ng Ka-ling* (1999), and made a judicial reference to the Standing Committee of the National People's Congress ("NPCSC") to seek an interpretation of the relevant provisions of the Basic Law in accordance with Article 158 (3) of the Basic Law.

- 1. Explain the rationale behind the arrangement in Article 158 (1), (2) and (3);**
(20 marks)
- 2. Discuss the nature of the NPCSC's power of interpretation of the Basic Law;**
(5 marks)
- 3. Were the conditions provided in Article 158 (3) of the Basic Law and in *Ng Ka-ling* for making a judicial reference to the NPCSC for interpretation satisfied in the Congo Case?**
(25 marks)

~ End of Examination Paper ~